

FORM A
FILING SHEET FOR EASTERN CAPE JUDGMENT

ECJ no : 54

PARTIES: **THE STATE**

VS

BRYCE WEBSTER

REFERENCE NUMBERS -

- Registrar: **20060325**
- Magistrate:
- Supreme Court of Appeal/Constitutional Court:

DATE DELIVERED: **15/5/2006**

JUDGE(S): **C. PLASKET**

LEGAL REPRESENTATIVES -

Appearances

:

- for the State/Applicant(s)/Appellant(s):
- for the accused/respondent(s):

Instructing attorneys:

- Applicant(s)/Appellant(s):
- Respondent(s):

CASE INFORMATION -

- *Nature of proceedings:* **REVIEW JUDGMENT**

- *Topic:*

- Keywords:

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION)**

**REVIEW NO: 20060325
DATE DELIVERED:18/5/06**

In the matter between:

THE STATE

and

BRYCE WEBSTER

REVIEW JUDGMENT

PLASKET, J

[1] The accused pleaded guilty in the East London Magistrate's Court to a charge of unlawful possession of 11 grams of dagga and 5 mandrax pills, a contravention of s 4(b) of the Drugs and Drug Trafficking Act 140 of 1992. He was correctly convicted on the basis of his plea. He was sentence to 12 months imprisonment.

[2] I requested the magistrate's reasons for imposing this sentence and asked him to state in particular why he decided to impose direct imprisonment rather than a non-custodial sentence, as recommended in the report furnished by a probation officer. The magistrate has responded, furnishing five reasons for imposing the sentence of 12 months imprisonment. They are:

- '(1) In paragraph 5.3 **physical and psychological** aspect of the probation officer's report it has been mentioned that accused

received treatment from Community Psychiatric Services, but discontinued the sessions on his own.

- (2) Accused also has or had problems or was causing problems at his places of work e.g. in the army also at his recent work, it appears that he either cannot do or has difficult to do without using drugs.
- (3) Accused appears to have a long lasting addiction to drugs, many people have tried to come to his help, his parents also community based organisations with no success.
- (4) In paragraph 7.4 it is reported that accused is not a first offender, suspended sentences were or had been imposed previously.
- (5) Offences involving drug abuse are rife not only in this district but country-wide.'

[3] I am of the view that the magistrate misdirected himself in imposing sentence. His reasons disclose that he failed to grasp the import of the probation officer's report and that he over-emphasised the gravity of the offence at the expense of the personal circumstances of the accused.

[4] The magistrate held it against the accused that (according to paragraph 5.3 of the probation officer's report) he 'received treatment from Community Psychiatric Services but discontinued the sessions on his own'. This must be seen in the context of the whole paragraph in which it appears. In paragraph 5.3 the probation officer stated that the accused was physically healthy, that 'they' had experienced problems with him in the army (in the early 1980's), that the accused's father had reported that the accused was diagnosed as schizophrenic and had, as a result, been discharged from the army, that he had received treatment from Community Psychiatric Services but discontinued the treatment on his own initiative. The paragraph ends with the sentence: 'The accused stated that he was motivated to follow a healthy lifestyle and did not need continued treatment.'

[5] There is no suggestion in this paragraph that the accused was being treated for a drug-related problem. Rather it appears that he was being treated for schizophrenia. Secondly, it is not stated when the accused decided to discontinue his treatment. For all I know that may have been many years ago. It is also evident from the probation officer's report that the accused foreswore reliance on drugs for a long period and it was only in 2005 that his employer began to notice that he had begun to display 'less reliable behaviour' and suspected, accordingly, that the accused had again begun to take drugs.

[6] The assertion by the magistrate that the accused had caused problems at his places of work, namely in the army and also at his last place of employment, loses sight of certain important facts. First, the accused was discharged from the army for schizophrenia. Second, that was in 1983, more than twenty years ago. Thirdly, his last employer, Mr John Carter informed the probation officer that the accused had been a reliable employee when he started working for him three years ago but that he had begun to display 'less reliable behaviour' during 2005, leading Mr Carter to suspect that the accused was using drugs. Fourthly, it is significant that although Mr Carter appears to have dismissed the accused, this was a temporary measure to allow him to 'address his habit'. In the light of the above, the magistrate's conclusion that 'it appears that he either cannot do or has difficulty to do without using drugs' is not justified.

[7] The magistrate also concluded that the accused had 'a long lasting addiction to drugs' which he was unable to overcome despite the efforts of a number of people. This too is at odds with the probation officer's report. As I have indicated above, the import of the report is that the accused was a productive member of society for a lengthy period of time between his last convictions, more than twenty years ago, and the present conviction. This conclusion, therefore, is also not justified.

[8] The same may be said of the magistrate's statement that the accused was not a first offender and that suspended sentences 'were or had been imposed

previously'. He has ignored the crucial fact that both of the accused's previous convictions are over 20 years old.

[9] Finally, the prevalence of drug abuse cannot, on its own, be sufficient to justify a sentence of direct imprisonment where on all the facts such a sentence is not otherwise justified. The accused should not be sacrificed on the altar of deterrence.

[10] It is my view that the magistrate misdirected himself in imposing sentence and that the sentence he imposed on the accused is so severe and so inappropriate that it induces a sense of shock. It must be set aside and replaced with a more appropriate sentence.

[11] I take into account that the accused has spent two months in prison, sentence having been imposed on 15 March 2006. He should not, in my view, have spent a day in prison. It would have been appropriate for him to have received a non-custodial sentence. I would have preferred that such a sentence included, as a condition of suspension, that he submit himself to rehabilitation for the drug-related problem he currently experiences. That would, however, delay the process unduly. Instead I shall impose a suspended sentence but I recommend most strongly that the accused take steps to address his problem.

[12] I make the following order.

- (a) The conviction is confirmed but the sentence is set aside.
- (b) The accused is sentenced to six months imprisonment, suspended for three years on condition that he is not convicted of contravening sections 4 or 5 of the Drugs and Drug Trafficking Act 140 of 1992 committed during the period of suspension.
- (c) The sentence set out above is antedated to 15 March 2006.

C. PLASKET
JUDGE OF THE HIGH COURT

I agree:

J. D. PICKERING
JUDGE OF THE HIGH COURT